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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

2006 NOV -3 P 3: 55

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JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR VALUE
OF THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING PURPOSES, TO
FIX A JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP SUCH
RETURN, AND TO AMEND DECISION NO.
67744.

DOCKET NO. E-01345A-05-0816

**RESPONSE TO APS' MOTION TO
PREVENT DISCLOSURE**

IN THE MATTER OF THE INQUIRY INTO THE
FREQUENCY OF UNPLANNED OUTAGES
DURING 2005 AT PALO VERDE NUCLEAR
GENERATING STATION, THE CAUSES OF THE
OUTAGES, THE PROCUREMENT OF
REPLACEMENT POWER AND THE IMPACT OF
THE OUTAGES ON ARIZONA PUBLIC
SERVICE COMPANY'S CUSTOMERS.

DOCKET NO. E-01345A-05-0826

IN THE MATTER OF THE AUDIT OF THE FUEL
AND PURCHASED POWER PRACTICES AND
COSTS OF THE ARIZONA PUBLIC SERVICE
COMPANY.

DOCKET NO. E-01345A-05-0827

Arizona Corporation Commission Staff ("Staff") hereby responds to the Motion to Prevent Disclosure filed by Arizona Public Service Company ("APS") on October 25, 2006. Staff believes that the proceedings necessary to dispose of this issue may unduly lengthen this proceeding without providing a corresponding public benefit. For that reason, Staff does not necessarily oppose APS' Motion, even though Staff may not agree with its underlying premise.

I. Facts

On October 10, 2006, which was the first day of the evidentiary hearing in the pending APS rate case, Commissioner Mayes asked APS to docket certain information related to a telephonic customer poll that APS had recently conducted. (Tr. at 100).¹ APS subsequently provided the poll to

¹ All transcript references are to the transcript of the evidentiary hearing in Docket No. E-01345A-05-0816.

1 the Commission under seal in accordance with the terms of an existing protective agreement. On
2 October 19, 2006, Commissioner Mayes acknowledged that she had received the confidential copy of
3 the customer poll, but requested that APS make the results of the poll publicly available. (Tr. at
4 1186). In response, APS claimed that the customer poll is confidential and stated that its
5 confidentiality should be maintained. (Tr. at 1306). APS also asked for permission to file a brief in
6 order to address the legal basis for the confidentiality of the customer poll. (Tr. at 1306-07). The
7 Administrative Law Judge granted that request, and APS has filed the present motion in compliance
8 with that ruling.

9 **II. The fact-specific inquiry that may be necessary in order to resolve this issue may**
10 **unduly lengthen this case without providing any evidentiary information**
11 **necessary to the record in this proceeding.**

12 Staff has not reached a conclusion regarding whether the APS customer poll qualifies for
13 treatment as a trade secret, but notes that pursuit of this inquiry is likely to require additional
14 Commission proceedings—proceedings which may substantially lengthen the pending rate case.
15 Whether a given compilation of information qualifies as a trade secret is a question of fact. In order
16 to conclude that APS' poll is not a trade secret, the Commission would need to conduct a suitable
17 proceeding that would both allow APS to present facts in support of its contentions and allow the
18 Commission to develop appropriate findings of fact in support of its eventual conclusions. This
19 effort could require the presentation of additional witnesses, which, in turn, could both lengthen and
20 complicate an already attenuated and complex proceeding. This result could have implications not
21 only for the requirements of the Timeclock Rule, but also for the rationing of Staff's extremely
22 limited resources.

23 These potential detriments should be balanced against any potential benefits that may be
24 gained from public disclosure of the customer poll. From Staff's perspective, this analysis of
25 benefits-versus-detriments should focus upon the issues that the Commission will be required to
26 examine in the pending rate case. Staff has filed extensive prefiled testimony in this case, and none
27 of that testimony discusses the customer poll. To the best of Staff's knowledge, the other parties'
28 extensive prefiled testimony is similarly silent. Nor have Staff or the other parties sought to

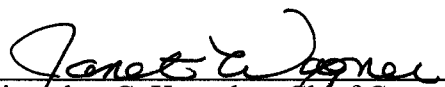
1 incorporate information about the customer poll into their respective cases since the poll's existence
2 was disclosed. From Staff's perspective, this silence indicates that the customer poll does not provide
3 information that the parties believe to be relevant to the issues in the pending rate case or useful to
4 their analyses of those issues.

5 Finally, it is important to note that Staff does not presume to speculate as to the benefits of
6 disclosure that the Commission may perceive; Staff offers these comments merely to provide Staff's
7 perspective on these issues. Staff's view is primarily influenced by our perception that a review of
8 the customer poll is not likely to be of evidentiary value in deciding the rate case, and Staff therefore
9 believes that the Commission should avoid any additional proceedings to assess the issue within the
10 context of the rate case proceedings.

11 **III. APS should be required to explain why the study cannot be redacted or**
12 **summarized in a manner that appropriately balances the competing interests.**

13 APS' Motion does not discuss whether or to what extent APS has considered redacting the
14 study or simply summarizing it so that it could be publicly docketed without disclosing any allegedly
15 confidential information. APS should be required to consider this option, which may allow all parties
16 to this matter to avoid further protracted proceedings.

17 RESPECTFULLY SUBMITTED this 3rd day of November, 2006.

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